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7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JOSEPH W. SIMONSON,
12 an individual,

13 Plaintiff,

14 vs.

15 ROBERT A. LONG, in his official
16 capacity as Commander, Space
17 Launch Delta 30; and DOES 1
through 10;

18 Defendants.

19 } Case No. 2:22-CV-03236

20 } **COMPLAINT FOR
21 } DECLARATORY AND
22 } INJUNCTIVE RELIEF**

23 **INTRODUCTION**

24 1. Persons retired from career active duty in the United States military have
25 long enjoyed an array of benefits granted to them in exchange for career military service,
26 including: (a) free direct medical and dental care at Military Treatment Facilities (MTFs);
27 (b) free prescription medication and medical supplies; (c) access to commissary and

1 exchange stores on military bases; and (d) participation in Morale, Welfare, and
2 Recreation (MWR) programs on military bases. Such benefits were and continue to be
3 routinely promised by recruiters as inducement to remain in the military as a career, and
4 are provided under various statutes and regulations. See, e.g., 32 C.F.R. § 161.9 (Retiree
5 benefits “include civilian health care, direct care at an MTF, commissary, exchange, and
6 MWR, which are conveyed on the authorized CAC or uniformed services ID card.”); 10
7 U.S.C. § 1074(b) (statutory right to direct medical and dental care at MTFs).

8 Accordingly, as one court observed, “[i]t is common knowledge that retired military
9 personnel frequently settle near a military installation where they have post exchange and
10 commissary privileges and free medical service.” Katcoff v. Marsh, 755 F.2d 223, 238
11 (2d Cir. 1985) (Meskill, J., concurring and dissenting).

12 2. Because many of these benefits are available only on military bases, retired
13 servicemembers must have physical access to those bases in order to obtain and exercise
14 these benefits. This is particularly true of medical and dental care, for which “direct
15 care” is provided only at on-base MTFs. In addition, because of the comprehensive
16 goods and services available to retired servicemembers on military bases, many retirees
17 rely upon the reduced prices at commissary and exchange stores to stretch thin retirement
18 pay and to acquire groceries, pharmaceuticals, medical equipment, clothing, and other
19 necessities at reduced or no cost. Moreover, because of the opportunity to socialize and
20 recreate with other veterans, many retirees use military bases their primary social outlets.

21 3. Plaintiff, age 75, is a retired veteran and officer of the United States Air
22 Force. Plaintiff was recruited into the Air Force during the Vietnam era, when recruiters
23 promised lifetime access to all military bases as a benefit of career military service.
24 During his 20 years on active duty, Plaintiff was stationed on a variety of military bases,
25 including Vandenberg Space Force Base (SFB), formerly known as Vandenberg Air
26 Force Base (AFB), in Santa Barbara County, California.

1 4. Subsequent to retirement from the military, Plaintiff worked as a military
2 contractor on Vandenberg AFB. Upon retiring as a military contractor, Plaintiff
3 permanently returned to his personal residence in Santa Barbara County in order to
4 access and enjoy his military rights and benefits, including the direct medical and dental
5 care to which he is entitled as a military retiree, and which he had obtained and relied
6 upon for several decades. Plaintiff also made Vandenberg SFB his primary outlet for
7 shopping, recreation, and socialization, as he has many friends who are also retired
8 military members and who also take advantage of access to that base.

9 5. Plaintiff was granted unescorted access to Vandenberg SFB for those
10 purposes for more than 30 years until November 2021, when he was suddenly and
11 without notice denied access to Vandenberg SFB, as more fully pleaded herein.
12 Specifically, in November 2021, personnel stationed at one or more Vandenberg SFB
13 gates informed Plaintiff that he is no longer permitted to enter Vandenberg SFB for any
14 purpose. The stated reason for Plaintiff's exclusion from Vandenberg SFB is his
15 presence on California's sex offender registry for a conviction sustained 30 years ago, in
16 1992. Plaintiff's conviction offense occurred after Plaintiff was retired from the military,
17 did not take place on a military base, and had no relationship to his military service.

18 6. As more fully pleaded herein, Plaintiff has a constitutionally protected
19 property interest in his military retirement benefits, including direct medical and dental
20 care, access to the commissary and exchange, and MWR programs. Plaintiff has received
21 and enjoyed those benefits as a retired member of the military for more than 30 years on
22 Vandenberg SFB. Denying Plaintiff access to Vandenberg SFB is tantamount to
23 depriving Plaintiff of his military retirement benefits because those benefits cannot be
24 exercised without physical access to a military base. Plaintiff was denied access to
25 Vandenberg SFB suddenly, without explanation or reason, and without notice, in
26 violation of the Due Process guarantee of the Fifth Amendment to the U.S. Constitution.
27 Separately, the denial of Plaintiff's access to Vandenberg FSB violates the Due Process
28

guarantee of the Fifth Amendment to the U.S. Constitution in that the decision did not comply with DoD policies governing base access set forth in DoD Manual 5200.08 Vol. 3, *Physical Security Program: Access to DoD Installations*, attached hereto as Exhibit A. Specifically, the denial of Plaintiff's access to Vandenberg SFB was a summary decision based solely upon Plaintiff's presence on a sex offender registry, rather than a reasoned decision based upon the criteria and evidence set forth in that policy document.

7. Plaintiff seeks a judgment declaring that Plaintiff: (a) enjoys a constitutionally protected property interest in his military retirement benefits; and (b) Plaintiff cannot be denied the ability to exercise his military retirement benefits without notice and a hearing consistent with the standard imposed by the Fifth Amendment to the U.S. Constitution. Plaintiff also seeks an injunction enforcing his right to access Vandenberg SFB and all other military bases consistent with these rights.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 and the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

9. Venue is proper in the Central District of California under 28 U.S.C. §1391(e)(1)(B) because a substantial part of the acts or omissions giving rise to the claims herein occurred in this district.

10. This Court has the authority to issue declaratory and injunctive relief, as well as any other appropriate relief, pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

PARTIES

11. Plaintiff Joseph W. Simonson (“Plaintiff”) is a retired career member of the United States Air Force who currently resides in Santa Barbara County, California.

12. Colonel Robert A. Long (“Defendant”) is the Commander of Space Launch Delta 30 and Western Launch and Test Range at Vandenberg SFB. In his official capacity, Defendant Long is responsible for the base access policies observed, applied, and enforced at Vandenberg SFB, including but not limited to Plaintiff’s denied access to Vandenberg SFB.

13. The true names and capacities of Defendants sued as Does 1 through 10 are unknown to Plaintiff, who therefore sues such Defendants by fictitious names. The Doe Defendants include employees of, or contractors, for the United States military who are responsible of Plaintiffs' denied access to Vandenberg SFB.

FACTS

The Benefits Granted to Retired Members of the Armed Forces Require Access to Military Bases

14. “It is common knowledge that retired military personnel frequently settle near a military installation where they have post exchange and commissary privileges and free medical service.” Katcoff v. Marsh, 755 F.2d 223, 238 (2d Cir. 1985) (Meskill, J., concurring and dissenting). See also Absher v. United States, 9 Cl. Ct. 223, 226 (1985), aff’d, 805 F.2d 1025 (Fed. Cir. 1986) (“As retirees of the uniformed services, plaintiffs are entitled to commissary, recreational, travel and health benefits in addition to their retired pay. See, e.g., Army Regs. 40–3, ¶ 4–11 (Feb. 15, 1985) (medical services); 60–20, ¶ 2–9 (Aug. 1, 1984) (exchange privileges); 30–19, App. B (October 15, 1982) (commissary privileges); 215–2, ch. 2 (August 26, 1985) (package stores; recreational privileges; morale support activities).”)

Direct Medical and Dental Care

15. A retired servicemember's right to direct medical and dental care at MTFs is granted by the Dependents Medical Care Act of 1956, 10 U.S.C. § 1074(b).

1 16. Members of the military, including retired members, have enjoyed free
 2 medical care since the earliest days of the Republic. Congress first authorized Army and
 3 Navy “medical departments” in 1799, with the primary mission of serving active-duty
 4 members.” U.S. Dep’t of Defense, *Military Compensation Background Papers* (7th Ed.
 5 Nov. 2011), at 907, citing 1 Stat. 721, 722 (1799) (hereinafter, “*Military Compensation*
 6 *Background Papers*”).

7 17. In later years, “[w]hen military personnel were given retirement rights, it
 8 always was understood that they might be recalled to active duty in time of national need,
 9 and it was determined that military retirees should be given medical care so that they
 10 would be available as force augmentees if needed. Retirees were in fact members, even
 11 if not on active duty, and both they and their dependents received medical care from
 12 military medical facilities on a ‘space-available’ basis.” Ibid.

13 18. After WWII, with the increase in the number of military retirees and other
 14 dependents, “[m]any retirees in fact were forced to seek medical services in the civilian
 15 economy. . . .” Because of the adverse effects on morale occasioned by rationing of
 16 medical care provided through military medical facilities to active-duty dependents and
 17 retirees (and their dependents), Congress determined to provide alternative sources of
 18 medical care to those communities, so that, if their medical care need could not in fact be
 19 met through the ‘space available’ military medical facilities, they would nevertheless get
 20 the care they needed.” Ibid. In 1956, Congress enacted the Dependents Medical Care
 21 Act, which “gave military retirees and their dependents the right to care in military
 22 medical facilities based upon ‘the availability of space and facilities and the capabilities
 23 of the medical and dental staff.’” Id. at 907-908, citing Pub. L. No. 84-569, 70 Stat. 250
 24 (1956). The Act “also gave the Secretary of Defense the authority to contract with
 25 civilian sources for the medical care of spouses and the children of active-duty members
 26 of the uniformed services, but not for retirees and their dependents.”

1 19. In later years, Congress authorized the Secretary of Defense to contract for
 2 off-base care for retirees in two successive programs, known as the Civilian Health and
 3 Medical Program of the Uniformed Services (CHAMPUS), and its successor, TRICARE.
 4 However, “*under CHAMPUS and TRICARE Standard, beneficiaries are generally*
 5 *required to obtain non-emergency inpatient care from nearby military medical facilities*
 6 *if such care is available there.*” *Id.* at 908, emphasis added. As TRICARE has been
 7 amended, “[a]ll beneficiaries continue to be eligible to receive care in MTFs[.]” *Id.* at
 8 911.

9 20. The purpose of an entitlement to free medical and dental care for retirees is
 10 in part “to create and maintain high morale in the uniformed services by providing an
 11 improved and uniform program of medical and dental care for members and certain
 12 former members of those services, and for their dependents.” 10 U.S.C. § 1071. As
 13 noted, since 1956, military retirees and their dependents have had “a contingent right to
 14 care in military medical—including dental—facilities based upon the ‘availability of
 15 space and facilities and the capabilities of the medical and dental staff.’” *Military*
 16 *Compensation Background Papers*, at 674, quoting 10 U.S.C. § 1074(b). In other
 17 words, military retirees have a statutory right and entitlement to access Military
 18 Treatment Facilities (MTFs) that provide medical and dental care, for the purpose of
 19 receiving “direct care” at those facilities, subject only to the availability of space or
 20 capable staff. The relevant statute, part of the Dependents’ Medical Care Act, currently
 21 reads:

22 Under joint regulations to be prescribed by the administering Secretaries, a
 23 member or former member of a uniformed service who is entitled to retired
 24 or retainer pay, or equivalent pay may, upon request, be given medical and
 25 dental care in any facility of any uniformed service, subject to the
 26 availability of space and facilities and the capabilities of the medical and
 27 dental staff. The administering Secretaries may, with the agreement of the
 28 Secretary of Veterans Affairs, provide care to persons covered by this
 subsection in facilities operated by the Secretary of Veterans Affairs and

1 determined by him to be available for this purpose on a reimbursable basis at
2 rates approved by the President.

3 10 U.S.C. § 1074(b).

4 21. The administering Secretaries of the branches of the United States military
5 have issued regulations implementing the statutory entitlement of 10 U.S.C. section 1074,
6 including but not limited to 32 U.S.C. § 161.13(a). See also 32 C.F.R. § 161.9(a).

7 22. Federal law does not categorically restrict military retirees who are required
8 to register as a sex offender, or persons convicted of a sex offense, from obtaining direct
9 medical and dental care at MTFs. Nor does federal law allow military retirees to be
10 denied access to MTFs for direct care because they are required to register and/or were
11 convicted of a sex offense. In other words, military retirees who are also registrants
12 enjoy the same entitlement to direct care at MTFs as all other military retirees.

13 ***Commissary, Exchange, and MWR Programs***

14 23. Access to the commissary, exchange, and Military Morale, Welfare, and
15 Recreation (MWR) programs are benefits awarded to retired members of the military. 32
16 C.F.R. § 161.3.

17 24. Commissary and exchange stores are retail outlets on military bases and
18 other facilities that offer groceries, gasoline, and other goods and services at reduced
19 prices. Many retired servicemembers depend upon their access to exchange and
20 commissary stores to afford basic necessities due to their limited retirement income. As
21 provided in 10 U.S.C. § 2481(a),

22 The Secretary of Defense shall operate, in the manner provided by this
23 chapter and other provisions of law, a world-wide system of commissary
24 stores and a separate world-wide system of exchange stores. The stores of
25 each system may sell, at reduced prices, food and other merchandise to
26 members of the uniformed services *entitled to retired pay*, dependents of such members, and
27 persons authorized to use the system under chapter 54 of this title.

28 10 U.S.C. § 2481(a), emphasis added.

1 25. As further explained in DoD Instruction 1330.17, “[t]he DoD commissary
 2 program is an integral element of the military pay and benefits package for active duty
 3 personnel. . . . [T]he DoD commissary program enhances the quality of life of members
 4 of the uniformed services, *retired members*, and their dependents and supports military
 5 readiness, recruitment, and retention.” DoDI 1330.17 (June 18, 2014), at 1, emphasis
 6 added. DoD Instruction 1330.17 confirms the right to retired service members to use the
 7 commissary:

8 PATRONS AUTHORIZED COMMISSARY PRIVILEGES. This section
 9 lists the individuals, organizations, and activities entitled to or authorized
 10 unlimited commissary privileges, except when prohibited by treaty or other
 11 international agreements in foreign countries.

12

13 c. Retired Personnel. The following categories of retired personnel are
 14 authorized commissary privileges:

15 (1) All personnel carried on the official retired lists (Active and Reserve
 16 Components) of the uniformed services who are retired with pay, granted
 17 retirement pay for physical disability, or entitled to retirement pay whether
 18 or not such pay is waived or pending due to age requirement; or enlisted
 19 personnel transferred to the Fleet Reserve of the Navy and the Fleet Marine
 20 Corps Reserve, after 20 or more years of active service. These personnel are
 21 equivalent to Army and Air Force retired enlisted personnel. For Reserve
 22 Components, see chapters 67, 367, 571, and 867 of Reference (c).

23 DoDI 1330.17 (June 18, 2014), at 9.

24 26. Similarly, Department of Defense Instruction 1330.21 provides that
 25 “Uniformed or Retired Uniformed Personnel” have “*unlimited* exchange service
 26 benefits.” DoDI 1330.21 (July 14, 2005), at 24, emphasis added.

27 27. MWR Programs include a comprehensive network of support services, as
 28 well as recreation, support, entertainment, travel, and leisure activities. DoD Instruction
 1015.10 provides that

29 Military MWR programs: (a) are an integral part of the military and benefits
 30 package; (b) Build healthy families and communities and provide
 31 consistently high quality support services that are commonly furnished by

1 other employers or State and local governments to their employees and
2 citizens; (c) Encourage positive individual values and aid in recruitment and
3 retention of personnel; and (d) Promote esprit de corps and provide for the
4 physical, cultural, and social needs; general well-being; quality of life
5 (QOL); and hometown community support of Service members and their
families.

6 DoDI 1015.10 (July 6, 2009), at 2. DoDI 1015.10 confirms that “Uniformed Services
7 retirees” have “*Unlimited Use Authorized for All MWR Programs.*” Id. at 21, emphasis
added.

8 28. Many retired servicemembers rely upon MWR Programs as their primary
9 social outlets. Federal law does not restrict military retirees who are required to register
10 as a sex offender, or persons convicted of a sex offense, from exercising commissary,
11 exchange, and MWR privileges solely because they are required to register as a sex
12 offender and/or were convicted of a sex offense.

13 **Plaintiff Joseph W. Simonson**

14 29. Plaintiff Joseph W. Simonson, age 75, is a retired veteran of the Air Force
15 who spent most of his career either as an active-duty member of the United States
16 military, or as a private contractor supporting the United States military.

17 30. Plaintiff joined the Reserve Officer Training Corps in college and, upon
18 graduation, was commissioned as a Second Lieutenant in the United States Air Force.
19 Plaintiff served on active duty in the Air Force for 20 years, retiring in 1988 with the rank
20 of Major. While serving on active duty, Plaintiff was awarded the Air Force
21 Commendation Medal three times, the Joint Service Commendation Medal once, and the
22 Meritorious Service Medal three times.

23 31. In 1992, four years after his retirement from the Air Force, Plaintiff was
24 convicted of a single count of violating California Penal Code section 288, subd. (c),
25 described as lewd and lascivious acts with a child aged 14-15. This is Plaintiff’s first and
26 only criminal conviction of any kind. Plaintiff’s offense did not occur on a military base,
27 and had no relation to the military or military service.

1 32. In 1993, Plaintiff moved his residence near Vandenberg SFB in part to take
2 advantage of the benefits available to retired members of the military on that base.

3 33. Between 2005 and 2014, Plaintiff was employed by a defense contractor as
4 an instructor and training developer. During that time, Plaintiff had a secret security
5 clearance, and accessed Vandenberg SFB base on a daily basis in his capacity as a
6 contractor employee.

7 34. In 2014, Plaintiff fully retired at age 67 as an employee of a base contractor.
8 Plaintiff continued to reside in his home near Vandenberg SFB because of the
9 opportunity to access that base for direct medical and dental care, to shop at the
10 commissary and exchange stores available there, and to socialize with other veterans. As
11 for many veterans, Plaintiff's access to Vandenberg SFB also became Plaintiff's most
12 meaningful social outlet in retirement.

13 35. Both before and for nearly three decades after his conviction, Plaintiff
14 regularly entered Vandenberg SFB for lawful purposes consistent with his work as a
15 contractor, as well as his entitlements and privileges as a retired veteran, without incident.
16 Plaintiff routinely purchased his groceries, gasoline, clothing, and other household goods
17 on base. Plaintiff obtained his pharmaceutical prescriptions on base free of charge.
18 Plaintiff also obtained annual physicals on base, as well has his annual flu shot and other
19 routine medical care.

20 36. In or about October 2021, Plaintiff attempted to enter Vandenberg SFB to
21 obtain medical prescriptions at the MTF and was denied access without explanation.
22 Plaintiff subsequently contacted Vandenberg Security Forces staff, who explained that
23 Plaintiff was denied and would continue to be denied access to Vandenberg SFB for all
24 purposes, including medical care, because of his presence on the sex offender registry.
25 At the time Plaintiff was denied entry to Vandenberg SFB, he was in the process of
26 completing his annual physical at the MTF. Laboratory tests had been performed, but
27 Plaintiff had not yet returned for his final consultation. Unable to complete an in-person
28

1 appointment, Plaintiff had a telephone consultation with his Primary Care Physician, at
2 which time Plaintiff was diagnosed for the first time with diabetes. Plaintiff's physician
3 discussed Plaintiff's need to undergo an immediate course of treatment for this chronic
4 life-threatening condition, but was prevented from doing so by virtue of his exclusion
5 from Vandenberg SFB.

6 **Base Access Policies**

7 37. On information and belief, the current policy governing physical access to
8 Vandenberg SFB is set forth in DoD Manual 5200.08 Vol. 3, *Physical Security Program: Access to DoD Installations*, which became effective on January 2, 2019. (Hereinafter,
9 "DoD Manual 5200.08", attached hereto as Exhibit A.) DoD Manual 5200.08 states that
10 "[base] Commanders have authority to take reasonably necessary and lawful measures to
11 protect installation property and personnel, but that authority must not be exercised in an
12 arbitrary, unpredictable, or discriminatory manner. Removal or denial actions must be
13 based on reasonable grounds and be judiciously applied." Exh. A at 4, emphasis added.
14

15 38. The "Requirements for Access to DoD Installation[s]" are set forth in
16 Section 3 of DoD Manual 5200.08. Among those requirements is a determination of a
17 person's "fitness" to be granted one of three types of base access: unescorted access,
18 trusted traveler, and escorted access. Exh. A at 9. Plaintiff has previously been granted
19 unescorted access to Vandenberg SFB.

20 39. Establishing fitness for unescorted access "has two elements: historic fitness
21 and current fitness." Exh. A at 10-11. A determination of "Historic Fitness" involves a
22 point-in-time review of the individual's prior criminal history achieved through a review
23 of government databases. Exh. A at 10. A determination of "Current fitness" involves
24 "recurring and continuing" review of an individual's "current derogatory information
25 through a check of authoritative government sources," among which are "the National
26 Sex Offender Registry." Exh. A at 11. However, DoD Manual 5200.08 provides that
27 "DoD Components may grant unescorted access to a convicted felon, in accordance with
28

1 applicable Federal, State, and local laws, after considering appropriate mitigating factors
2 such as the nature and seriousness of the offense, the circumstances surrounding the
3 offense, recency and frequency of the offense, the individual's age and maturity at the
4 time of the offense, the individual's effort toward rehabilitation, and other factors." Exh.
5 A at 11, emphasis added.

6 40. As pleaded above, on information and belief, the denial of Plaintiff's access
7 to Vandenberg SFB did not comply, and is not consistent with, the requirements set forth
8 in DoD Manual 5200.08, because the decision to deny Plaintiff access to Vandenberg
9 SFB was based solely upon Plaintiff's presence on a sex offender registry. The decision
10 was therefore arbitrary and not judiciously applied, without "considering appropriate
11 mitigating factors."

12

13 **CLAIM FOR RELIEF**

14 **(Fifth Amendment – Deprivation of Property Without Due Process of Law)**

15 41. Plaintiff re-alleges and incorporates the foregoing paragraphs of this
16 Complaint as though fully set forth herein.

17 42. Plaintiff is a retired member of the United States Air Force who is entitled to
18 retired pay, as well as other benefits afforded to retired members of the military,
19 including: (a) free direct medical and dental care at Military Treatment Facilities; (b) free
20 prescription medication and medical supplies; (c) access to commissary and exchange
21 stores on military bases; and (d) participation in Morale, Welfare, and Recreation (MWR)
22 programs on military bases.

23 43. Vandenberg SFB is a Military Treatment Facility which has space adequate
24 to provide, and staff capable of providing, direct medical and dental care to Plaintiff.
25 Vandenberg SFB is also a facility that makes available commissary, exchange, and MWR
26 programs and facilities to military retirees. Consistent with his status as a retired member
27
28

1 of the U.S. military, Plaintiff entered Vandenberg SFB for as many as 30 years for the
2 purpose of exercising these benefits.

3 44. “The Supreme Court has held that *continued receipt* of Government benefits
4 is a statutorily created property interest protected by the Fifth and Fourteenth
5 Amendments. . . . Under the Supreme Court’s analysis, a person obtains a property
6 interest in a benefit once it is acquired.” Greene v. Lujan, No. C89–645Z, 1992 WL
7 533059, at *3 (W.D. Wash. Feb. 25, 1992), aff’d sub nom. Greene v. Babbitt, 64 F.3d
8 1266 (9th Cir. 1995), citing Matthews v. Eldridge, 424 U.S. 319, 332; Board of Regents
9 v. Roth, 408 U.S. 564, 576 (1972). Accordingly, due process is implicated whenever the
10 federal government alters or extinguishes a previously recognized right or status. Roth,
11 408 U.S. at 576-77 (The aim of the Fifth Amendment is “to protect those claims upon
12 which people rely in their daily lives, reliance that must not be arbitrarily undermined.”);
13 Greene, 64 F.3d at 1271-74.

14 45. Plaintiff has a constitutionally cognizable and protected property interest in
15 the military retirement benefits identified herein, by virtue of: (a) his status as a retired
16 member of the military; (b) the provisions of law granting retired members of the military
17 a legitimate claim to such benefits; (c) Plaintiff’s enjoyment of such benefits for a 30-
18 year period; and (d) Plaintiff’s extensive reliance interest and settled expectations of such
19 benefits, as pleaded herein.

20 46. The actions of Defendant, and his subordinates and agents, to deprive
21 Plaintiff access to Vandenberg SFB are tantamount to a deprivation of Plaintiff’s property
22 interest in his military retirement benefits, because those benefits cannot be exercised
23 without physical access to a military base. Greene, 64 F.3d at 1271-74. This deprivation
24 of Plaintiff’s property rights occurred without notice, without hearing, and without other
25 process as required by law.

26 47. Separately, Plaintiff’s exclusion from Vandenberg SFB denied Plaintiff due
27 process law for the additional reason that Defendant, and his subordinates and agents,
28

1 failed to comply with Department of Defense procedures governing access to military
2 bases. Specifically, DoD policy mandates that “authority [to exclude a base visitor] must
3 not be exercised in an arbitrary, unpredictable, or discriminatory manner. Removal or
4 denial actions must be based on reasonable grounds and be judiciously applied.”
5 Plaintiff’s denial of base access was also accomplished in violation of DoD base access
6 policy mandating that “DoD Components may grant unescorted access to a convicted
7 felon, in accordance with applicable Federal, State, and local laws, after considering
8 appropriate mitigating factors such as the nature and seriousness of the offense, the
9 circumstances surrounding the offense, recency and frequency of the offense, the
10 individual’s age and maturity at the time of the offense, the individual’s effort toward
11 rehabilitation, and other factors.” That is, the denial of base access to Plaintiff was
12 arbitrary, and not based upon either reasoned grounds or judiciously applied, in that it
13 was based solely upon Plaintiff’s requirement to register as a sex offender, rather than a
14 reasoned and judicious consideration of the above-referenced factors, including but not
15 limited to Plaintiff’s status as a retired member of the military, his purpose for entering
16 Vandenberg SFB, Plaintiff’s age and health, the details of Plaintiff’s conviction, the
17 number of years that Plaintiff has entered Vandenberg SFB without incident, and
18 Plaintiff’s demonstrably successful efforts toward rehabilitation.

19

20 **PRAYER FOR RELIEF**

21 Based on the foregoing claims, Plaintiff seeks judgment against Defendants as
22 follows:

23 a. A judgment declaring that Plaintiff has a constitutionally protected property
24 interest in military retirement benefits to direct medical and dental care at
25 Military Treatment Facilities, access to commissary and exchange facilities,
26 and MWR program privileges.

- b. A judgment declaring that Plaintiff cannot be denied access to Vandenberg SFB when he seeks to access these retirement benefits without notice and hearing.
- c. Plaintiffs' reasonable attorney's fees and costs under 28 U.S.C. Section 1988; and
- d. Any other relief the Court deems just and proper.

Dated: May 12, 2022

LAW OFFICE OF JANICE M. BELLUCCI

By: /s/ Janice M. Bellucci
Janice M. Bellucci
Attorney for Plaintiff